

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DAVID PRICE,

Plaintiff,

v.

FLUOR ENTERPRISE, INC. &
WESTINGHOUSE ELECTRIC
COMPANY, LLC,

Defendants.

CIVIL ACTION FILE NO.

JURY TRIAL DEMANDED

COMPLAINT

COMES NOW Plaintiff, David Price, by and through undersigned counsel, The Kirby G. Smith Law Firm, LLC, and hereby files this Complaint and files suit against Defendants, Fluor Enterprise, Inc. (“Fluor”) and Westinghouse Electric Company, LLC (“Westinghouse”), showing the court as follows:

I. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 over Count I of this Complaint, which arises out of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. (“ADA”).

2. Venue is proper in this Court because all Defendants reside within the Atlanta Division of the Northern District of Georgia.
3. Plaintiff exhausted all administrative remedies in this matter. *Dismissal and Notice of Rights*, Ex. 1.

II. PARTIES

4. Plaintiff is a citizen of the United States and a resident of Burke County, Georgia.
5. Defendant Fluor is a foreign corporation registered to conduct business in the State of Georgia.
6. Defendant Fluor may be served by delivering a copy of the Complaint and Summons to its registered agent, Corporation Service Company, located at 40 Technology Parkway South, Suite 300, Norcross, Georgia 30092.
7. Defendant Westinghouse is a foreign corporation registered to conduct business in the State of Georgia.
8. Defendant Westinghouse may be served by delivering a copy of the Complaint and Summons to its registered agent, CT Corporation System, located at 289 S. Culver St., Lawrenceville, Georgia 30046.
9. In all relevant respects, Defendants are joint employers.

10. Defendants are subject to the requirements of the laws enumerated in the Jurisdiction and Venue section of this Complaint.

III. FACTUAL ALLEGATIONS

11. Defendant Westinghouse owns and operate the Vogtle Electric Generating Plant (“Plant”).

12. Defendant Fluor is a subcontractor of Westinghouse Electric Company, LLC (“Westinghouse”).

13. Plaintiff was employed by Defendants from August 2, 2016, to March 31, 2017.

14. During the events in question, Plaintiff was employed by Defendants as a Senior Construction Manager at the Plant.

15. Plaintiff was not given any indication of a poor performance by Defendants.

16. In March 2017, Plaintiff was given a positive work performance by Defendants.

17. In March 2017, Plaintiff received a performance based bonus from Defendants.

18. Plaintiff suffers from Chronic Kidney Disease.

19. Plaintiff’s condition was diagnosed as Stage 4 Chronic Kidney disease in

April 2016.

20. Plaintiff informed Defendants of his medical condition.

21. In January 26, 2017, Plaintiff's treatments were altered due to the severity of his medical condition.

22. Plaintiff began taking several prescribed medications for his disease, as part of a clinical study.

23. Plaintiff also took a half-day off of work every week for treatment.

24. Plaintiff continued to work 50 hours per week.

25. Plaintiff informed Defendants of his condition, as well as his participation in the clinical study.

26. On March 24, 2017, Plaintiff was informed that another employee reported that Plaintiff was asleep at work.

27. Plaintiff denied sleeping.

28. Plaintiff reminded Defendants of his medical conditions, and that he was on several medications.

29. Defendants' Human Resources instructed Plaintiff to take a Fitness For Duty ("FFD") evaluation.

30. Plaintiff took the FFD on March 24, 2017.

31. On March 27, 2017, Plaintiff was informed that he passed the FFD and was released for full duty.
32. On March 28, 2017, Plaintiff was instructed by Defendants that he was not permitted to return to work.
33. On March 28, 2017, Plaintiff was given another FFD evaluation.
34. Plaintiff was informed that he passed the March 28, 2017 FFD evaluation.
35. On March 31, 2017, Plaintiff was terminated by Defendants.
36. Other employees of Defendants have fallen asleep on the job without being terminated.
37. Plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission in June 2017.
38. Plaintiff received his Notice of Right to Sue on September 21, 2018.

IV. CLAIMS FOR RELIEF

COUNT I: ADA DISCRIMINATION

39. Plaintiff incorporates by reference paragraphs 1- 38 of his Complaint as if fully set forth herein.
40. Plaintiff is a qualified individual with a disability. *Paras. 15-19.*
41. Defendant was aware of Plaintiff's disability. *Paras. 20, 25.*

42. Plaintiff suffered the adverse action of termination. *Para 35.*

43. Plaintiff is unaware of any similarly-situated employees being terminated under similar circumstances.

44. Plaintiff is unaware of any similarly-situated disabled employees working for Defendant during the time period in question in this Complaint.

45. The timing of Defendant's increased questions regarding Plaintiff's condition and Plaintiff's termination give rise to an inference of discrimination.

46. Defendant's business reason for Plaintiff's termination is pretextual. *Paras. 15-17; 26-27.*

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Honorable Court grant the following relief:

- a. Trial by jury;
- b. A finding that Defendant violated Plaintiff's rights as set forth herein;
- c. Reinstatement with Plaintiff's requested accommodation or, in the alternate front pay;
- d. Full back pay plus interest, front pay, compensatory damages, punitive damages, reasonable attorney fees, and costs in accordance

with the ADA, to exceed \$25,000; and

e. Any other relief this Court deems proper and just.

Date: December 20, 2018.

Respectfully submitted,

THE KIRBY G. SMITH LAW FIRM, LLC

s/Amanda M. Brookhuis

Amanda Brookhuis

Georgia Bar No. 601396

Kirby G. Smith

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JURY DEMAND

Plaintiff requests a jury trial on all questions of fact raised by this Complaint.

Respectfully submitted this 20th of December, 2018.

THE KIRBY G. SMITH LAW FIRM, LLC

s/Amanda M. Brookhuis

Amanda Brookhuis

Georgia Bar No. 601396

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FONT AND POINT CERTIFICATION

The Undersigned counsel for Plaintiff certifies that the within and foregoing COMPLAINT was prepared using Times New Roman, 14-point font in accordance with LR 5.1(B).

Respectfully submitted this 20th of December, 2018.

THE KIRBY G. SMITH LAW FIRM, LLC

s/Amanda M. Brookhuis

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